



**THE ATTORNEY GENERAL  
OF TEXAS**

July 11, 1990

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Ron Lindsey  
Commissioner  
Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

LO-90-43

Dear Mr. Lindsey:

You express concern that conflicts of interest may exist when employees of the Department of Human Services (the department) provide counseling services to the general public outside of their department work hours. You ask whether the department "could adopt a personnel policy prohibiting its employees from engaging in social work counseling activities with the general public in a private capacity." If not, you ask if the department could prohibit such activity for employees who provide counseling services for the department?

An administrative agency "may only exercise those powers granted by statute, together with those necessarily implied from the statutory authority conferred or duties imposed." City of Sherman v. Public Util. Comm'n, 643 S.W.2d 681, 686 (Tex. 1983). The department may establish "reasonable personnel policies for which there is an adequate showing of need" pursuant to its implied statutory authority. Attorney General Opinion JM-188 (1984), at 2; accord Attorney General Opinion JM-93 (1983), at 2. See also Bishop v. Wood, 426 U.S. 341 (1976); Perry v. Sindermann, 408 U.S. 593 (1972); Schwartz v. Bd. of Bar Examiners, 353 U.S. 232 (1957) (right to work may be curtailed for legitimate state interest).

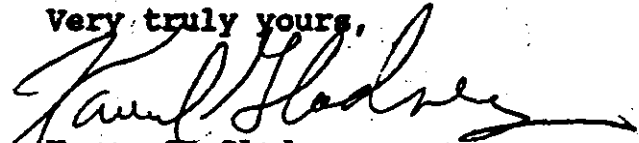
In Attorney General Opinion JM-188, this office upheld the validity of a rule adopted by your agency that prohibited child protective service workers from performing court-ordered social studies on their own time, because such activity "would compete with the department for court appointments and revenue under [certain specified] sections of the Family Code or would . . . have other adverse affects on the department." Id. In contrast, Attorney General Opinion H-1317 (1978) determined that a department rule

prohibiting all departmental personnel from being licensed as real estate brokers or salesmen was overbroad.

You have not suggested any basis for prohibiting department employees, regardless of their job classification or duties, from conducting counseling services on their own time. Nor have you offered any basis to support a rule prohibiting department counselors from performing private counseling services. Absent a showing that the prohibitions are reasonably related to some interest of the department, the department may not adopt the suggested prohibitions.

In summary, the Department of Human Services may not prohibit employees, regardless of their job classification or duties, from conducting counseling services on their own time unless it can show that there would be an adverse affect on the department.

Very truly yours,



Karen C. Gladney  
Assistant Attorney General  
Opinion Committee

APPROVED: Rick Gilpin, Chairman  
Opinion Committee

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KCG/er

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